

No. 14-0145 PO

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

The Director cites the request for admissions that was served on Kaemmerer on June 23, 2014. Kaemmerer did not respond to the request. Under Supreme Court Rule 59.01, the failure to answer a request for admissions establishes the matters asserted in the request, and no further proof is required.² Such a deemed admission can establish any fact or any application of law to fact.³ That rule applies to all parties, including those acting *pro se*.⁴ Section 536.073⁵ and 1 CSR 15-3.420(1) apply that rule to this case.

We gave Kaemmerer until October 3, 2014, to respond to the motion, but he did not respond. Therefore, the following facts are undisputed.

Findings of Fact

1. Kaemmerer is licensed as a peace officer by the Department of Public Safety. His license is current and active and was so at all relevant times.
2. On September 20, 2012, in Foristell, Missouri, Kaemmerer committed the crimes of careless and imprudent driving, a Class B⁶ misdemeanor, and exceeding the posted speed limit (more than twenty miles per hour over the posted speed), a Class B misdemeanor, when he drove a motor vehicle at a speed of 142 miles per hour in a 70-mile-per-hour speed zone.
3. On September 20, 2012, Kaemmerer committed the crime of resisting arrest by fleeing, a Class A misdemeanor, when, after being observed driving a motor vehicle in excess of the posted speed limit, Kaemmerer continued to operate his motor vehicle after he saw or should have seen a police officer's clearly visible emergency lights and/or heard or should have heard the police officer's clearly audible signal emanating from the officer's emergency vehicle.

² *Killian Constr. Co. v. Tri-City Constr. Co.*, 693 S.W.2d 819, 827 (Mo. App., W.D. 1985).

³ *Linde v. Kilbourne*, 543 S.W.2d 543, 545-46 (Mo. App., W.D. 1976).

⁴ *Research Hosp. v. Williams*, 651 S.W.2d 667, 669 (Mo. App., W.D. 1983).

⁵ RSMo 2000. Statutory references, unless otherwise noted are to the 2013 Supplement to the Revised Statutes of Missouri.

⁶ The Director's complaint states that this is a Class C misdemeanor, but we quote the law later where the crime is described as a Class B or Class A misdemeanor.

4. On March 20, 2013, in the City of Foristell Municipal Court, Kaemmerer pled guilty to the criminal offenses of careless and imprudent driving, exceeding the posted speed limit, and resisting arrest by fleeing.

Conclusions of Law

We have jurisdiction to hear this case.⁷ The Director has the burden of proving that Kaemmerer has committed an act for which the law allows discipline.⁸ The Director argues there is cause for discipline under § 590.080:

1. The director shall have cause to discipline any peace officer licensee who:

(2) Has committed any criminal offense, whether or not a criminal charge has been filed[.]

Careless and imprudent driving is a criminal offense under § 304.012:⁹

1. Every person operating a motor vehicle on the roads and highways of this state shall drive the vehicle in a careful and prudent manner and at a rate of speed so as not to endanger the property of another or the life or limb of any person and shall exercise the highest degree of care.

2. Any person who violates the provisions of this section is guilty of a class B misdemeanor, unless an accident is involved then it shall be a class A misdemeanor.

Exceeding the posted speed limit is a criminal offense.¹⁰ Section 304.010 authorizes entities such as county commissions and the highways and transportation commission to set speed limits. Violating the speed limit is a misdemeanor under § 304.010:

⁷ Sections 621.045 and 590.080.2.

⁸ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App., E.D. 1989).

⁹ RSMo 2000.

¹⁰ The request for admissions does not appear to specifically ask about this criminal offense, but it was included in the complaint, and the Director provided the certified court records as additional evidence.

11. Any person violating the provisions of this section is guilty of a class C misdemeanor, unless such person was exceeding the posted speed limit by twenty miles per hour or more then it is a class B misdemeanor.

Resisting arrest by fleeing is a criminal offense under § 575.150:

1. A person commits the crime of resisting or interfering with arrest, detention, or stop if, knowing that a law enforcement officer is making an arrest, or attempting to lawfully detain or stop an individual or vehicle, or the person reasonably should know that a law enforcement officer is making an arrest or attempting to lawfully detain or lawfully stop an individual or vehicle, for the purpose of preventing the officer from effecting the arrest, stop or detention, the person:

(1) Resists the arrest, stop or detention of such person by using or threatening the use of violence or physical force or by fleeing from such officer[.]

3. A person is presumed to be fleeing a vehicle stop if that person continues to operate a motor vehicle after that person has seen or should have seen clearly visible emergency lights or has heard or should have heard an audible signal emanating from the law enforcement vehicle pursuing that person.

5. Resisting an arrest, detention or stop by fleeing in such a manner that the person fleeing creates a substantial risk of serious physical injury or death to any person is a class D felony; otherwise, resisting or interfering with an arrest, detention or stop in violation of subdivision (1) or (2) of subsection 1 of this sections is a class A misdemeanor.

Kaemmerer committed and pled guilty to all three of these criminal offenses. He is subject to discipline under § 590.080.1(2).

Summary

Kaemmerer is subject to discipline under § 590.080.1(2). We grant the motion for summary decision and cancel the hearing.

SO ORDERED on October 20, 2014.

\s\ Sreenivasa Rao Dandamudi
SREENIVASA RAO DANDAMUDI
Commissioner